SUPREME COURT, U. S.

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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

October Term, 1969.

No. 943.

CONTINENTAL CAN COMPANY, INC.,
Petitioner,

v.

CROWN CORK & SEAL COMPANY, INC.,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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QUESTION PRESENTED

Did the Court of Appeals correctly hold that the prior art made obvious to one having ordinary skill in the art the invention of patent 2,954,914?

STATEMENT OF THE CASE

Continental Can Company's Maier patent 2,654,914, the validity of which was in issue in this case, concerns a method for lining metal bottle caps of the type commonly used on beer and soft drink bottles with a synthetic plastic material known as plastisol. It calls for an unlined cap to move under a heated nozzle which deposits into the cap a "button" of hot liquid plastisol. After the deposit of the plastisol, the cap is conveyed onto a heated surface where a heated plunger enters the open side of the cap and compresses and shapes the button to form a liner within the cap. The heat from the plunger and from the surface (or platen) below the cap brings the plastisol button, in two or three seconds, to temperatures ranging from 275° 375° F., which partially cure the plastisol. Curing and hardening of the molded liner is then completed in an oven.

The "inventor" of the patent in suit acknowledged that the idea of using a heated plunger, a heated platen and a curing oven to mold bottle cap liners came from the prior art Evans & Schneider patent 2,688,776 (A 3; 105a; 108a; see 183a-184a).[1] In addition, plastisol was not new as a lining for bottle caps. It had been described in the prior art Foye South African patent 2556/47 (A 3; 133a-168a) which employed a heated nozzle to deposit the plastisol into a cap. This Foye patent was expressly referred to in the patent in suit (130a). As Petitioner admitted, when prosecuting its patent before the Patent Office, the Foye patent "... describes the characteristic properties of the resin

[1] References with the prefixes "A" and "R" are to the appendices A and R respectively of the Petition for a Writ of Certiorari. References with the suffix "a" are to the appendix in the Court of Appeals.

CONCLUSION.

For these reasons, a Writ of Certiorari to review the judgment and opinion of the Court of Appeals for the Third Circuit should be denied.

Respectfully submitted,

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